

Appl. No. : 10/743,841
Filed : December 22, 2003

REMARKS

In the Office Action, Claims 1-23 and 28-32 were rejected for double patenting as discussed below. No claims have been amended or added in this paper. Claims 24-27 have been canceled as drawn to non-elected subject matter. Therefore, Claims 1-23 and 28-32 remain pending for further consideration.

Double Patenting Rejection

Applicant thanks Examiner Bockelman for courtesies extended to Applicant and Applicant's representative on November 29, 2006.

Double Patenting Rejection

The Examiner rejected Claims 1-23 and 28-32 under the judicially created doctrine of obviousness-type double patenting in view of Claims 1-20 of U.S. Patent No. 7,048,680 (the '680 patent). As noted by the Examiner, a timely filed terminal disclaimer in compliance with 37 CFR §1.321(c) may be used to overcome a rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. Applicant has filed a terminal disclaimer herewith demonstrating common ownership. Applicant respectfully requests that this rejection be withdrawn.

The '680 patent and the present application are commonly owned by Orqis Medical Corporation. The inventors of the '680 patent assigned their rights to the '680 patent and all divisionals and continuations related to the '680 patent in an assignment to Orqis Medical Corporation recorded at reel/frame 012591/0797 on February 25, 2002. The present application is a divisional of the '680 patent, and is owned by Orqis Medical Corporation, as evidenced by the same assignment.

Therefore, the attached terminal disclaimer overcomes the double patenting rejection, and Applicant respectfully requests withdrawal of the rejection. It is believed that the attached terminal disclaimer places the present application in condition for allowance, and Applicant respectfully requests the same.

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CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejection set forth in the outstanding Office Action has been overcome. Accordingly, issuance of a Notice of Allowance is most earnestly solicited.

Applicant respectfully traverses each of the Examiner's rejections. Although a terminal disclaimer has been filed, no acquiescence or estoppel is or should be implied thereby. Rather, the terminal disclaimer was filed only to expedite prosecution of the present application.

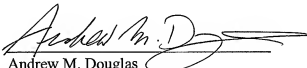
The undersigned has made a good faith effort to respond to the double patenting rejection and to place the application in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Andrew M. Douglas at (949) 721-7623 to resolve such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 29, 2007

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